

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 455

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING
CONSTRUCTION OF SCHOOL FACILITIES TO COMPLY WITH THE STATEWIDE
ADEQUACY STANDARDS; REQUIRING MAINTENANCE PLANS FOR ALL PUBLIC
SCHOOLS; INCREASING DISTRIBUTIONS PURSUANT TO THE PUBLIC SCHOOL
CAPITAL IMPROVEMENTS ACT; CREATING A PROGRAM TO REPAIR OR
REPLACE DAMAGED ROOFS OF PUBLIC SCHOOL FACILITIES; PROVIDING
FOR THE ASSESSMENT OF CHARTER SCHOOL FACILITIES; EXTENDING THE
TIME PERIOD OF EXEMPT STATUS FOR PUBLIC SCHOOL FACILITIES
AUTHORITY EMPLOYEES; SHIFTING THE OFFSET FOR PREVIOUS
APPROPRIATIONS FOR EDUCATIONAL TECHNOLOGY; CHANGING CERTAIN
FUNDING CRITERIA FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS;
CHANGING THE DUTIES, COMPOSITION AND TERM OF THE PUBLIC SCHOOL
CAPITAL OUTLAY OVERSIGHT TASK FORCE; RESTRICTING PROPERTY
INSURANCE PROCEEDS; PROVIDING THAT CERTAIN BOND PROCEEDS BE
TRANSFERRED IMMEDIATELY UPON SALE OF THE BONDS; REQUIRING THE

1 APPLICATION OF STATE CONSTRUCTION STANDARDS AND CERTAIN FIRE
2 REGULATIONS TO PUBLIC SCHOOL FACILITIES; MAKING APPROPRIATIONS;
3 DECLARING AN EMERGENCY.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 Section 1. A new section of the Severance Tax Bonding
7 Act, Section 7-27-12.3 NMSA 1978, is enacted to read:

8 "7-27-12.3. [NEW MATERIAL] ADMINISTRATION OF CERTAIN BOND
9 PROCEEDS APPROPRIATED TO THE PUBLIC SCHOOL CAPITAL OUTLAY
10 FUND. -- Proceeds of severance tax bonds and supplemental
11 severance tax bonds previously or hereafter issued by the state
12 board of finance that are appropriated to the public school
13 capital outlay fund for the purpose of carrying out the
14 provisions of the Public School Capital Outlay Act shall,
15 except to the extent that the proceeds are derived from any
16 bonds the interest on which is excluded from federal income
17 tax, be transferred by the state board of finance immediately
18 upon receipt to the public school capital outlay fund. All
19 money so transferred shall be administered for disbursement
20 purposes by the public school capital outlay council consistent
21 with the requirements of the Public School Capital Outlay Act."

22 Section 2. Section 22-15A-9 NMSA 1978 (being Laws 1994,
23 Chapter 96, Section 9, as amended) is amended to read:

24 "22-15A-9. EDUCATIONAL TECHNOLOGY FUND-- DISTRIBUTION. --

25 A. Upon annual review and approval of a school

1 district's educational technology plan, the bureau shall
2 determine a separate distribution from the educational
3 technology fund for each school district.

4 B. On or before July 31 of each year, the bureau
5 shall distribute money in the educational technology fund
6 directly to each school district in an amount equal to ninety
7 percent of the school district's estimated adjusted entitlement
8 calculated pursuant to Subsection C of this section. A school
9 district's unadjusted entitlement is that portion of the total
10 amount of the annual appropriation that the projected
11 membership bears to the projected membership of the state.
12 Kindergarten membership shall be calculated on a one-half full-
13 time-equivalent basis.

14 C. A school district's estimated adjusted
15 entitlement shall be calculated by the bureau using the
16 following procedure:

17 (1) a base allocation is calculated by
18 multiplying the total annual appropriation by seventy-five
19 thousandths percent;

20 (2) the estimated adjusted entitlement amount
21 for a school district whose unadjusted entitlement is at or
22 below the base allocation shall be equal to the base
23 allocation. For a school district whose unadjusted entitlement
24 is higher than the base allocation, the estimated adjusted
25 entitlement shall be calculated pursuant to Paragraphs (3)

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1 through ~~(13)~~ (6) of this subsection;

2 (3) the total projected membership in those
3 school districts that will receive the base allocation pursuant
4 to Paragraph (2) of this subsection is subtracted from the
5 total projected state membership;

6 (4) the total of the estimated adjusted
7 entitlement amounts that will be distributed to those school
8 districts receiving the base allocation pursuant to Paragraph
9 (2) of this subsection is subtracted from the total
10 appropriation;

11 (5) the projected membership for the district
12 is divided by the result calculated pursuant to Paragraph (3)
13 of this subsection; and

14 (6) the estimated adjusted entitlement amount
15 for the school district equals the number calculated pursuant
16 to Paragraph (5) of this subsection [is] multiplied by the
17 value calculated pursuant to Paragraph (4) of this subsection.

18 ~~[(7) excluding appropriations made prior to~~
19 ~~January 1, 2003 and reauthorizations of previous educational~~
20 ~~technology appropriations, the total of educational technology~~
21 ~~appropriations made in the immediately preceding three fiscal~~
22 ~~years directly to, and not rejected by, the school district, is~~
23 ~~calculated. No later than June 30 of each year, the department~~
24 ~~of finance and administration shall certify to the bureau the~~
25 ~~amount of direct appropriations made to each school district~~

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1 ~~during the preceding twelve months. An appropriation made in a~~
 2 ~~fiscal year shall be deemed to be accepted by a school district~~
 3 ~~unless, prior to July 15 of the fiscal year following the~~
 4 ~~appropriation, the district notifies the department of finance~~
 5 ~~and administration and the public education department that the~~
 6 ~~district is rejecting the appropriation;~~

7 ~~(8) the applicable amount for the school~~
 8 ~~district calculated from Subparagraph (k), (m), (n) or (o) of~~
 9 ~~Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is~~
 10 ~~subtracted from one;~~

11 ~~(9) the value calculated pursuant to Paragraph~~
 12 ~~(7) of this subsection for the school district is multiplied by~~
 13 ~~the amount calculated pursuant to Paragraph (8) of this~~
 14 ~~subsection for that school district;~~

15 ~~(10) the total amount of reductions for the~~
 16 ~~school district made in the immediately two preceding fiscal~~
 17 ~~years pursuant to Paragraph (11) of this subsection is~~
 18 ~~subtracted from the amount calculated pursuant to Paragraph (9)~~
 19 ~~of this subsection for that school district;~~

20 ~~(11) the amount calculated for the school~~
 21 ~~district pursuant to Paragraph (10) of this subsection is~~
 22 ~~subtracted from the amount calculated pursuant to Paragraph (6)~~
 23 ~~of this subsection for that school district;~~

24 ~~(12) if the amount calculated for the school~~
 25 ~~district pursuant to Paragraph (11) of this subsection is equal~~

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1 ~~to or less than the base allocation amount, the estimated~~
2 ~~adjusted entitlement amount for that school district is equal~~
3 ~~to the base allocation amount; and~~

4 ~~(13) if the amount calculated for the school~~
5 ~~district pursuant to Paragraph (11) of this subsection is more~~
6 ~~than the base allocation amount, the estimated adjusted~~
7 ~~entitlement amount for that school district is equal to the~~
8 ~~amount calculated pursuant to that paragraph.]~~

9 D. On or before January 30 of each year, the bureau
10 shall recompute each adjusted entitlement using the final
11 funded membership for that year and, without making any
12 additional reductions, shall allocate the balance of the annual
13 appropriation adjusting for any over- or under-projection of
14 membership.

15 E. A school district receiving funding pursuant to
16 the Technology for Education Act is responsible for the
17 purchase, distribution, use and maintenance of educational
18 technology.

19 F. As used in this section, "membership" means the
20 total enrollment of qualified students, as defined in the
21 Public School Finance Act, on the current roll of class or
22 school on a specified day. The current roll is established by
23 the addition of original entries and reentries minus
24 withdrawals. Withdrawal of students, in addition to students
25 formally withdrawn from the public school, includes students

1 absent from the public school for as many as ten consecutive
2 school days. "

3 Section 3. Section 22-20-1 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 270, as amended) is amended to read:

5 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
6 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY
7 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE. --

8 A. Each local school board shall secure the
9 approval of the director of the public school facilities
10 authority or [~~his~~] the director's designee prior to the
11 construction or letting of contracts for construction of any
12 school building or related school structure or before reopening
13 an existing structure that was formerly used as a school
14 building but that has not been used for that purpose during the
15 previous year. A written application shall be submitted to the
16 director requesting approval of the construction, and, upon
17 receipt, the director shall forward a copy of the application
18 to the [~~state superintendent~~] secretary. The director shall
19 prescribe the form of the application, which shall include the
20 following:

- 21 (1) a statement of need;
22 (2) the anticipated number of students
23 affected by the construction;
24 (3) the estimated cost;
25 (4) a description of the proposed construction

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1 ~~[or structure to be built]~~ project;

2 (5) a map of the area showing existing school
3 attendance centers within a five-mile radius and any
4 obstructions to attending the attendance centers, such as ~~[but~~
5 ~~not limited to]~~ railroad tracks, rivers and limited-access
6 highways; and

7 (6) such other information as may be required
8 by the director.

9 B. The director or ~~[his]~~ the director's designee
10 shall give ~~[his]~~ approval to an application if ~~[he]~~ the
11 director or designee reasonably determines that:

12 (1) the construction will not cause an
13 unnecessary proliferation of school construction;

14 (2) the construction is needed in the school
15 district;

16 (3) the construction is feasible;

17 (4) the cost of the construction is
18 reasonable;

19 (5) the construction project:

20 (a) is in compliance with the statewide
21 adequacy standards adopted pursuant to the Public School
22 Capital Outlay Act; and

23 (b) if relevant, is appropriately
24 integrated into the school district master plan;

25 ~~[-5-]~~ (6) the school district is financially

1 able to pay for the construction; and

2 ~~[(6)]~~ (7) the ~~[state superintendent]~~ secretary
 3 has certified that the construction will support the
 4 educational program of the school district.

5 C. Within thirty days after the receipt of an
 6 application filed pursuant to this section, the director or
 7 ~~[his]~~ the director's designee shall in writing notify the local
 8 school board making the application and the department ~~[of~~
 9 ~~education]~~ of ~~[his]~~ approval or disapproval of the application.

10 D. A local school board shall not enter into a
 11 contract for the construction of a public school facility,
 12 including contracts funded with insurance proceeds, unless the
 13 contract contains provisions requiring the construction to be
 14 in compliance with the statewide adequacy standards adopted
 15 pursuant to the Public School Capital Outlay Act,
 16 provided that, for a contract funded in whole or in part with
 17 insurance proceeds:

18 (1) the cost of settlement of any insurance
 19 claim shall not be increased by inclusion of the insurance
 20 proceeds in the construction contract; and

21 (2) insurance claims settlements shall
 22 continue to be governed by insurance policies, memoranda of
 23 coverage and rules related to them.

24 E. Public school facilities shall be constructed
 25 pursuant to state standards or codes promulgated pursuant to

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1 the Construction Industries Licensing Act and rules adopted
2 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and
3 control of fires in public occupancies. Building standards or
4 codes adopted by a municipality or county do not apply to the
5 construction of public school facilities, except those
6 structures constructed as a part of an educational program of a
7 school district.

8 F. The provisions of Subsection E of this section
9 relating to fire protection shall not be effective until the
10 public regulation commission has adopted the International Fire
11 Code and all standards related to that code.

12 G. As used in this section, "construction" means
13 any project for which the construction industries division of
14 the regulation and licensing department requires permitting."

15 Section 4. Section 22-24-4 NMSA 1978 (being Laws 1975,
16 Chapter 235, Section 4, as amended) is amended to read:

17 "22-24-4. FUND CREATED--USE. --

18 A. There is created the "public school capital
19 outlay fund". Balances remaining in the fund at the end of
20 each fiscal year shall not revert.

21 B. Except as provided in Subsections G through K of
22 this section, money in the fund may be used only for capital
23 expenditures deemed by the council necessary for an adequate
24 educational program.

25 C. The council may authorize the purchase by the

1 public school facilities authority of portable classrooms to be
2 loaned to school districts to meet a temporary requirement.
3 Payment for these purchases shall be made from the fund. Title
4 and custody to the portable classrooms shall rest in the public
5 school facilities authority. The council shall authorize the
6 lending of the portable classrooms to school districts upon
7 request and upon finding that sufficient need exists.
8 Application for use or return of state-owned portable classroom
9 buildings shall be submitted by school districts to the
10 council. Expenses of maintenance of the portable classrooms
11 while in the custody of the public school facilities authority
12 shall be paid from the fund; expenses of maintenance and
13 insurance of the portable classrooms while in the custody of a
14 school district shall be the responsibility of the school
15 district. The council may authorize the permanent disposition
16 of the portable classrooms by the public school facilities
17 authority with prior approval of the state board of finance.

18 D. Applications for assistance from the fund shall
19 be made by school districts to the council in accordance with
20 requirements of the council. The council shall require as a
21 condition of application that a school district have a current
22 five-year facilities plan, which shall include a current
23 preventive maintenance plan to which the school adheres for
24 each public school in the school district.

25 E. The council shall review all requests for

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1 assistance from the fund and shall allocate funds only for
2 those capital outlay projects that meet the criteria of the
3 Public School Capital Outlay Act.

4 F. Money in the fund shall be disbursed by warrant
5 of the department of finance and administration on vouchers
6 signed by the secretary of finance and administration following
7 certification by the council that an application has been
8 approved or an expenditure has been ordered by a court pursuant
9 to Section [~~22-24-5.5~~] 22-24-5.4 NMSA 1978. At the discretion
10 of the council, money for a project shall be distributed as
11 follows:

12 (1) up to ten percent of the portion of the
13 project cost funded with distributions from the fund or five
14 percent of the total project cost, whichever is greater, may be
15 paid to the school district before work commences with the
16 balance of the grant award made on a cost-reimbursement basis;
17 or

18 (2) the council may authorize payments
19 directly to the contractor.

20 G. Balances in the fund may be annually
21 appropriated for the core administrative functions of the
22 public school facilities authority pursuant to the Public
23 School Capital Outlay Act and, in addition, balances in the
24 fund may be expended by the public school facilities authority,
25 upon approval of the council, for project management expenses;

1 provided that:

2 (1) the total annual expenditures from the
3 fund pursuant to this subsection shall not exceed five percent
4 of the average annual grant assistance authorized from the fund
5 during the three previous fiscal years; and

6 (2) any unexpended or unencumbered balance
7 remaining at the end of a fiscal year from the expenditures
8 authorized in this subsection shall revert to the fund.

9 H. Up to one million two hundred fifty thousand
10 dollars (\$1,250,000) of the balances of the fund may be
11 expended in fiscal years 2003 and 2004 by the council for the
12 purpose of updating and refining the statewide assessment study
13 required by Section 22-24-5 NMSA 1978 and for the training of
14 state and local officials on the use of the database and other
15 data-management-related issues identified by the council.

16 ~~[I. Of the appropriation made to the fund by~~
17 ~~Subsection D of Section 15 of Chapter 338 of Laws 2001 for the~~
18 ~~purpose of correcting outstanding deficiencies, one million one~~
19 ~~hundred thousand dollars (\$1,100,000) is appropriated to the~~
20 ~~council for expenditure in fiscal years 2004 through 2007 for~~
21 ~~the core administrative functions of the deficiencies~~
22 ~~corrections program. Any unexpended or unencumbered balance~~
23 ~~remaining at the end of fiscal year 2007 shall revert to the~~
24 ~~fund.~~

25 ~~J. Up to seven hundred thousand dollars (\$700,000)~~

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1 ~~of the balances of the fund may be expended by the council in~~
2 ~~fiscal year 2004 for the core administrative functions of the~~
3 ~~public school facilities authority.]~~

4 I. Up to thirty million dollars (\$30,000,000) of
5 the fund may be allocated annually by the council in fiscal
6 years 2006 and 2007 for a roof repair and replacement
7 initiative with projects to be identified by the council
8 pursuant to Section 22-24-4.3 NMSA 1978; provided that all
9 money allocated pursuant to this subsection shall be expended
10 prior to September 1, 2008.

11 ~~[K.]~~ J. Up to four million dollars (\$4,000,000)
12 from the fund may be expended annually by the council in fiscal
13 years 2005 through 2009 for grants to school districts for the
14 purpose of making lease payments for classroom facilities,
15 including facilities leased by charter schools. The grants
16 shall be made upon application by the school districts and
17 pursuant to rules adopted by the council, ~~[and]~~ provided that,
18 an application on behalf of a charter school shall be made by
19 the school district but, if the school district fails to make
20 an application on behalf of a charter school, the charter
21 school may submit its own application. The following criteria
22 shall apply to the grants:

23 (1) the amount of a grant to a school district
24 shall not exceed:

25 (a) the actual annual lease payments

1 owed for leasing classroom space for schools, including charter
2 schools, in the district; or

3 (b) three hundred dollars (\$300) for
4 fiscal year 2005 and six hundred dollars (\$600) for fiscal
5 years 2006 through 2009 multiplied by the number of MEM using
6 the leased classroom facilities; provided that, if the total
7 grants awarded pursuant to this paragraph would exceed the
8 total annual amount available, the rate specified in this
9 subparagraph shall be reduced proportionately;

10 (2) a grant received for the lease payments of
11 a charter school may be used by that charter school as a state
12 match necessary to obtain federal grants pursuant to the
13 federal No Child Left Behind Act of 2001;

14 (3) at the end of each fiscal year, any
15 unexpended or unencumbered balance of the appropriation shall
16 revert to the fund; and

17 (4) as used in this subsection, "MEM" means:

18 (a) the ~~[total]~~ average full-time-
19 equivalent enrollment using leased classroom facilities ~~[in the~~
20 ~~final-funded]~~ on the fortieth, eightieth and one hundred
21 twentieth days of the prior school year; or

22 (b) in the case of an approved charter
23 school that has not commenced classroom instruction, the
24 estimated full-time-equivalent enrollment that will use leased
25 classroom facilities in the first year of instruction, as shown

1 in the approved charter school application, provided that,
2 after the fortieth day of the school year, the MEM shall be
3 adjusted to reflect the full-time-equivalent enrollment on that
4 date.

5 K. In addition to other authorized expenditures
6 from the fund, up to one percent of the average grant
7 assistance authorized from the fund during the three previous
8 fiscal years may be expended in each fiscal year by the public
9 school facilities authority to reimburse the state fire
10 marshal, the construction industries division of the regulation
11 and licensing department and local jurisdictions having
12 authority from the state to permit and inspect projects for
13 expenditures made to permit and inspect projects funded in
14 whole or in part under the Public School Capital Outlay Act.
15 The authority shall enter into contracts with the state fire
16 marshal, the construction industries division or the
17 appropriate local authorities to carry out the provisions of
18 this subsection."

19 Section 5. A new section of the Public School Capital
20 Outlay Act, Section 22-24-4.3 NMSA 1978, is enacted to read:

21 "22-24-4.3. [NEW MATERIAL] ROOF REPAIR AND REPLACEMENT
22 INITIATIVE. --

23 A. The council shall develop guidelines for a roof
24 repair and replacement initiative pursuant to the provisions of
25 this section.

1 B. A school district, desiring a grant award
2 pursuant to this section, shall submit an application to the
3 council. The application shall include an assessment of the
4 roofs on district school buildings that, in the opinion of the
5 school district, create a threat of significant property
6 damage.

7 C. The public school facilities authority shall
8 verify the assessment made by the school district and rank the
9 application with similar applications pursuant to a methodology
10 adopted by the council.

11 D. After a public hearing and to the extent that
12 money is available in the fund for such purposes, the council
13 shall approve roof repair or replacement projects on the
14 established priority basis; provided that no project shall be
15 approved unless the council determines that the school district
16 is willing and able to pay the portion of the total cost of the
17 project that is not funded with grant assistance from the fund.
18 In order to pay its portion of the total project cost, a school
19 district may use state distributions made to the school
20 district pursuant to the Public School Capital Improvements Act
21 or, if within the scope of the authorizing resolution, proceeds
22 of the property tax imposed pursuant to that act.

23 E. The state share of the cost of an approved
24 project shall be calculated pursuant to the methodology in
25 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

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1 F. A grant made pursuant to this section shall be
2 expended by the school district prior to September 1, 2008. "

3 Section 6. A new section of the Public School Capital
4 Outlay Act, Section 22-24-4.4 NMSA 1978, is enacted to read:

5 "22-24-4.4. [NEW MATERIAL] SERIOUS ROOF DEFICIENCIES--
6 CORRECTION. --

7 A. To complete the program to correct outstanding
8 deficiencies, those serious deficiencies in the roofs of public
9 school facilities identified pursuant to Section 22-24-4.1 NMSA
10 1978 as adversely affecting the health or safety of students
11 and school personnel shall be corrected pursuant to this
12 section, regardless of the local effort or percentage of
13 indebtedness of the school district, subject to the following
14 provisions:

15 (1) if the council determines that the school
16 district has excess capital improvement funds received pursuant
17 to the Public School Capital Improvements Act, the cost of
18 correcting the deficiencies shall first come from the school
19 district's excess funds, and if the excess funds are
20 insufficient to correct the deficiencies, the difference shall
21 be paid from the public school capital outlay fund; and

22 (2) if the school district refuses to pay its
23 share of the cost of correcting deficiencies as determined
24 pursuant to Paragraph (1) of this subsection, future
25 distributions from the public school capital improvements fund

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1 pursuant to Section 22-25-9 NMSA 1978 shall not be made to the
 2 school district but shall be made to the public school capital
 3 outlay fund until the public school capital outlay fund is
 4 reimbursed in full for the school district's share.

5 B. It is the intent of the legislature that all
 6 awards for correcting outstanding deficiencies in public school
 7 roofs that may adversely affect the health and safety of
 8 students and school personnel be made pursuant to this section
 9 no later than September 30, 2005 and that funds be expended no
 10 later than September 30, 2007. "

11 Section 7. Section 22-24-5 NMSA 1978 (being Laws 1975,
 12 Chapter 235, Section 5, as amended) is amended to read:

13 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
 14 APPLICATION-- GRANT ASSISTANCE. --

15 A. Applications for grant assistance, the approval
 16 of applications, the prioritization of projects and grant
 17 awards shall be conducted pursuant to the provisions of this
 18 section; provided, however, that the order of priority in the
 19 [~~three~~] two years beginning July 1, 2004 shall first reflect
 20 those specific projects that were partially funded by the
 21 council in September 2003 but are not as yet completed,
 22 excluding any expansion of the scope of those projects and
 23 contingent upon maintenance of the required local support. In
 24 that transition period, such projects shall be funded
 25 regardless of any deviation from the statewide adequacy

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1 standards; provided that the amount of the award received shall
2 not exceed the amount necessary to meet the statewide adequacy
3 standards, including projected enrollment growth.

4 B. Except as provided in Subsection A of this
5 section and in [~~Section 22-24-5.5~~] Sections 22-24-4.3 and
6 22-24-5.4 NMSA 1978, the following provisions govern grant
7 assistance from the fund for a public school capital outlay
8 project not wholly funded pursuant to Section 22-24-4.1 NMSA
9 1978:

10 (1) all school districts are eligible to apply
11 for funding from the fund, regardless of percentage of
12 indebtedness;

13 (2) priorities for funding shall be determined
14 by using the statewide adequacy standards developed pursuant to
15 Subsection C of this section; provided that:

16 (a) the council shall apply the
17 standards to charter schools to the same extent that they are
18 applied to other public schools; and

19 (b) in an emergency in which the health
20 or safety of students or school personnel is at immediate risk
21 or in which there is a threat of significant property damage,
22 the council may award grant assistance for a project using
23 criteria other than the statewide adequacy standards;

24 (3) the council shall establish criteria to be
25 used in public school capital outlay projects that receive

1 grant assistance pursuant to the Public School Capital Outlay
2 Act. In establishing the criteria, the council shall consider:

3 (a) the feasibility of using design,
4 build and finance arrangements for public school capital outlay
5 projects;

6 (b) the potential use of more durable
7 construction materials that may reduce long-term operating
8 costs; and

9 (c) any other financing or construction
10 concept that may maximize the dollar effect of the state grant
11 assistance;

12 (4) no more than ten percent of the combined
13 total of grants in a funding cycle shall be used for
14 retrofitting existing facilities for technology infrastructure;

15 (5) except as provided in Paragraph (6) or (8)
16 of this subsection, the state share of a project approved and
17 ranked by the council shall be funded within available
18 resources pursuant to the provisions of this paragraph. No
19 later than May 1 of each calendar year, a value shall be
20 calculated for each school district in accordance with the
21 following procedure:

22 (a) the final prior year net taxable
23 value for a school district divided by the MEM for that school
24 district is calculated for each school district;

25 (b) the final prior year net taxable

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1 value for the whole state divided by the MEM for the state is
2 calculated;

3 (c) excluding any school district for
4 which the result calculated pursuant to Subparagraph (a) of
5 this paragraph is more than twice the result calculated
6 pursuant to Subparagraph (b) of this paragraph, the results
7 calculated pursuant to Subparagraph (a) of this paragraph are
8 listed from highest to lowest;

9 (d) the lowest value listed pursuant to
10 Subparagraph (c) of this paragraph is subtracted from the
11 highest value listed pursuant to that subparagraph;

12 (e) the value calculated pursuant to
13 Subparagraph (a) of this paragraph for the subject school
14 district is subtracted from the highest value listed in
15 Subparagraph (c) of this paragraph;

16 (f) the result calculated pursuant to
17 Subparagraph (e) of this paragraph is divided by the result
18 calculated pursuant to Subparagraph (d) of this paragraph;

19 (g) the sum of the property tax mill
20 levies for the prior tax year imposed by each school district
21 on residential property pursuant to Chapter 22, Article 18 NMSA
22 1978, the Public School Capital Improvements Act, the Public
23 School Buildings Act, the Education Technology Equipment Act
24 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
25 is calculated for each school district;

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1 (h) the lowest value calculated pursuant
 2 to Subparagraph (g) of this paragraph is subtracted from the
 3 highest value calculated pursuant to that subparagraph;

4 (i) the lowest value calculated pursuant
 5 to Subparagraph (g) of this paragraph is subtracted from the
 6 value calculated pursuant to that subparagraph for the subject
 7 school district;

8 (j) the value calculated pursuant to
 9 Subparagraph (i) of this paragraph is divided by the value
 10 calculated pursuant to Subparagraph (h) of this paragraph;

11 (k) if the value calculated for a
 12 subject school district pursuant to Subparagraph (j) of this
 13 paragraph is less than five-tenths, then, except as provided in
 14 Subparagraph (n) or (o) of this paragraph, the value
 15 ~~[calculated]~~ for that school district equals the value
 16 calculated pursuant to Subparagraph (f) of this paragraph
 17 ~~[equals the portion of the approved project to be funded from~~
 18 ~~the fund];~~

19 (l) if the value calculated for a
 20 subject school district pursuant to Subparagraph (j) of this
 21 paragraph is five-tenths or greater, then that value is
 22 multiplied by five-hundredths;

23 (m) if the value calculated for a
 24 subject school district pursuant to Subparagraph (j) of this
 25 paragraph is five-tenths or greater, then the value calculated

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1 pursuant to Subparagraph (l) of this paragraph is added to the
2 value calculated pursuant to Subparagraph (f) of this
3 paragraph. Except as provided in Subparagraph (n) or (o) of
4 this paragraph, the sum equals the ~~[portion of the approved~~
5 ~~project to be funded from the fund]~~ value for that school
6 district;

7 (n) in those instances in which the
8 calculation pursuant to Subparagraph (k) or (m) of this
9 paragraph yields a value less than one-tenth, one-tenth shall
10 be used as the ~~[portion of the approved project to be funded~~
11 ~~from the fund]~~ value for the subject school district;

12 (o) in those instances in which the
13 calculation pursuant to Subparagraph (k) or (m) of this
14 paragraph yields a value greater than one, one shall be used as
15 the ~~[portion of the approved project to be funded from the~~
16 ~~fund]~~ value for the subject school district;

17 (p) except as reduced pursuant to
18 Paragraph (6) of this subsection, the amount to be distributed
19 from the fund for an approved project: ~~[shall equal the value~~
20 ~~for the subject school district derived from Subparagraph (k),~~
21 ~~(m), (n) or (o) of this paragraph multiplied by the total~~
22 ~~project cost]~~ 1) in calendar year 2005, shall equal the total
23 project cost multiplied by a fraction the numerator of which is
24 the value calculated for the subject school district in 2005
25 plus the value calculated for that district in 2004 and the

1 denominator of which is two; and 2) in calendar year 2006 and
 2 each subsequent calendar year, shall equal the total project
 3 cost multiplied by a fraction the numerator of which is the
 4 value calculated for the subject school district in the current
 5 year plus the value calculated for that school district in each
 6 of the two preceding years and the denominator of which is
 7 three; and

8 (q) as used in this paragraph: 1) "MEM"
 9 means the [~~total~~] average full-time-equivalent enrollment of
 10 students attending public school in a school district [in the
 11 final-funded] on the fortieth, eightieth and one hundred
 12 twentieth days of the prior school year; and 2) "total project
 13 cost" means the total amount necessary to complete the public
 14 school capital outlay project less any insurance reimbursement
 15 received by the school district for the project;

16 (6) the amount calculated pursuant to
 17 Subparagraph (p) of Paragraph (5) of this subsection shall be
 18 reduced by the following procedure:

19 (a) the total of all legislative
 20 appropriations made after January 1, 2003 [~~directly to, and not~~
 21 ~~rejected by, the subject school district]~~ for nonoperating
 22 purposes either directly to the subject school district or to
 23 another governmental entity for the purpose of passing the
 24 money through directly to the subject school district, and not
 25 rejected by the subject school district, but excluding

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1 educational technology appropriations made prior to January 1,
2 2005 and reauthorizations of appropriations previously made to
3 the subject school district, is calculated; provided that an
4 appropriation made in a fiscal year shall be deemed to be
5 accepted by a school district unless, prior to [~~July 15 of the~~
6 ~~fiscal year following the appropriation~~] June 1 of that fiscal
7 year, the school district notifies the department of finance
8 and administration and the public education department that the
9 district is rejecting the appropriation; provided further that
10 the total shall be increased by an amount, certified to the
11 council by the department, equal to the educational technology
12 appropriations made to the subject school district on or after
13 January 1, 2003 and prior to January 1, 2005 and not previously
14 used to offset distributions pursuant to the Technology for
15 Education Act;

16 (b) the applicable [~~amount for the~~
17 ~~subject school district calculated from Subparagraph (k), (m),~~
18 ~~(n) or (o)~~] fraction used for the subject school district and
19 the current calendar year for the calculation in Subparagraph
20 (p) of Paragraph (5) of this subsection is subtracted from one;

21 (c) the value calculated pursuant to
22 Subparagraph (a) of this paragraph for the subject school
23 district is multiplied by the amount calculated pursuant to
24 Subparagraph (b) of this paragraph for that school district;

25 (d) the total amount of reductions for

1 the subject school district previously made pursuant to
 2 Subparagraph (e) of this paragraph for other approved public
 3 school capital outlay projects is subtracted from the amount
 4 calculated pursuant to Subparagraph (c) of this paragraph; and

5 (e) the amount calculated pursuant to
 6 Subparagraph (p) of Paragraph (5) of this subsection shall be
 7 reduced by the amount calculated pursuant to Subparagraph (d)
 8 of this paragraph;

9 (7) as used in Paragraphs (5) and (6) of this
 10 subsection, "subject school district" means the school district
 11 that has submitted the application for funding and in which the
 12 approved public school capital outlay project will be located;

13 (8) ~~[in those instances in which a school~~
 14 ~~district has used all of its local resources, the council may~~
 15 ~~fund up to the total amount of a project]~~ the council may
 16 adjust the amount of local share otherwise required if it
 17 determines that a school district has used all of its local
 18 resources. Before making any adjustment to the local share,
 19 the council shall consider whether:

20 (a) the school district has insufficient
 21 bonding capacity over the next four years to provide the local
 22 match necessary to complete the project and, for all
 23 educational purposes, has a property tax rate of at least ten
 24 dollars (\$10.00) on each one thousand dollars (\$1,000) of
 25 taxable value, as measured by the sum of all rates imposed by

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1 resolution of the local school board plus rates set to pay
2 interest and principal on outstanding school district general
3 obligation bonds;

4 (b) the school district: 1) has fewer
5 than an average of eight hundred full-time-equivalent students
6 on the fortieth, eightieth and one hundred twentieth days of
7 the prior school year; 2) has at least seventy percent of its
8 students eligible for free or reduced fee lunch; 3) has a share
9 of the total project cost, as calculated pursuant to provisions
10 of this section, that would be greater than fifty percent; and
11 4) for all educational purposes, has a property tax rate of at
12 least seven dollars (\$7.00) on each one thousand dollars
13 (\$1,000) of taxable value, as measured by the sum of all rates
14 imposed by resolution of the local school board plus rates set
15 to pay interest and principal on outstanding school district
16 general obligation bonds; or

17 (c) the school district has: 1) an
18 enrollment growth rate over the previous school year of at
19 least two and one-half percent; 2) pursuant to its five-year
20 facilities plan, will be building a new school within the next
21 two years; and 3) for all educational purposes, has a property
22 tax rate of at least ten dollars (\$10.00) on each one thousand
23 dollars (\$1,000) of taxable value, as measured by the sum of
24 all rates imposed by resolution of the local school board plus
25 rates set to pay interest and principal on outstanding school

1 district general obligation bonds; and

2 (9) no application for grant assistance from
3 the fund shall be approved unless the council determines that:

4 (a) the public school capital outlay
5 project is needed and included in the school district's
6 five-year facilities plan among its top priorities;

7 (b) the school district has used its
8 capital resources in a prudent manner;

9 (c) the school district has provided
10 insurance for buildings of the school district in accordance
11 with the provisions of Section 13-5-3 NMSA 1978;

12 (d) the school district has submitted a
13 five-year facilities plan that includes: 1) enrollment
14 projections; 2) a current preventive maintenance plan that has
15 been approved by the council pursuant to Section 22-24-5.3 NMSA
16 1978 and that is followed by each public school in the
17 district; 3) the capital needs of charter schools located in
18 the school district; and [3-] 4) projections for the facilities
19 needed in order to maintain a full-day kindergarten program;

20 (e) the school district is willing and
21 able to pay any portion of the total cost of the public school
22 capital outlay project that, according to Paragraph (5), (6) or
23 (8) of this subsection, is not funded with grant assistance
24 from the fund; provided that school district funds used for a
25 project that was initiated after September 1, 2002 when the

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1 statewide adequacy standards were adopted, but before September
2 1, 2004 when the standards were first used as the basis for
3 determining the state and school district share of a project,
4 may be applied to the school district portion required for that
5 project;

6 (f) the application includes the capital
7 needs of any charter [~~schools~~] school located in the school
8 district or the school district has shown that the facilities
9 of the charter [~~schools in the district meet the statewide~~
10 ~~adequacy standards~~] school has a smaller deviation from the
11 statewide adequacy standards than other district facilities
12 included in the application; and

13 (g) the school district has agreed, in
14 writing, to comply with any reporting requirements or
15 conditions imposed by the council pursuant to Section 22-24-5.1
16 NMSA 1978.

17 C. After consulting with the public school capital
18 outlay task force and other experts, the council shall
19 regularly review and update statewide adequacy standards
20 applicable to all school districts. The standards shall
21 establish the acceptable level for the physical condition and
22 capacity of buildings, the educational suitability of
23 facilities and the need for technological infrastructure.
24 Except as otherwise provided in the Public School Capital
25 Outlay Act, the amount of outstanding deviation from the

1 standards shall be used by the council in evaluating and
2 prioritizing public school capital outlay projects.

3 D. It is the intent of the legislature that grant
4 assistance made pursuant to this section [~~allow~~] allows every
5 school district to meet the standards developed pursuant to
6 Subsection C of this section; provided, however, that nothing
7 in the Public School Capital Outlay Act or the development of
8 standards pursuant to that act prohibits a school district from
9 using local funds to exceed the statewide adequacy standards.

10 E. Upon request, the council shall work with, and
11 provide assistance and information to, the public school
12 capital outlay oversight task force.

13 F. The council may establish committees or task
14 forces, not necessarily consisting of council members, and may
15 use the committees or task forces, as well as existing agencies
16 or organizations, to conduct studies, conduct surveys, submit
17 recommendations or otherwise contribute expertise from the
18 public schools, programs, interest groups and segments of
19 society most concerned with a particular aspect of the
20 council's work.

21 G. Upon the recommendation of the public school
22 facilities authority, the council shall develop building
23 standards for public school facilities and shall promulgate
24 other such rules as are necessary to carry out the provisions
25 of the Public School Capital Outlay Act.

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1 H. No later than December 15 of each year, the
2 council shall prepare a report summarizing its activities
3 during the previous fiscal year. The report shall describe in
4 detail all projects funded, the progress of projects previously
5 funded but not completed, the criteria used to prioritize and
6 fund projects and all other council actions. The report shall
7 be submitted to the public education commission, the governor,
8 the legislative finance committee, the legislative education
9 study committee and the legislature. "

10 Section 8. Section 22-24-5.3 NMSA 1978 (being Laws 2003,
11 Chapter 147, Section 5) is amended to read:

12 "22-24-5.3. PREVENTIVE MAINTENANCE PLANS--GUIDELINES--
13 APPROVAL.--

14 A. The council shall adopt guidelines that will
15 assist school districts in the development and implementation
16 of preventive maintenance plans. In developing the guidelines,
17 the council shall ensure that they are not overly complex, that
18 they are user-friendly and that they take into account the
19 geographic and size variations of the districts throughout the
20 state. The guidelines shall include the major requirements
21 for:

22 (1) establishing and implementing a preventive
23 maintenance plan;

24 (2) necessary budgets, personnel and staff
25 support;

1 (3) staff training; and

2 (4) evaluation and auditing.

3 B. The council shall develop, implement and
 4 maintain a uniform web-based facility information management
 5 system. Within available appropriations, the council shall
 6 develop a schedule and procedure for phasing all school
 7 districts into the system, including those school districts not
 8 applying for grant assistance pursuant to the Public School
 9 Capital Outlay Act. The facility information management system
 10 shall:

11 (1) provide a centralized database of
 12 maintenance activities to allow for monitoring, supporting and
 13 evaluating school-level and districtwide maintenance efforts;

14 (2) provide comprehensive maintenance request
 15 and expenditure information to the school districts and the
 16 council; and

17 (3) facilitate training of facilities
 18 maintenance and management personnel.

19 [~~B.~~] C. To the extent resources are available, the
 20 council shall provide assistance to districts in developing and
 21 implementing a preventive maintenance plan.

22 [~~C.~~] D. For project allocation cycles beginning
 23 after September 1, 2003, a school district shall not be
 24 eligible for funding pursuant to Section 22-24-5 NMSA 1978
 25 unless:

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1 (1) the school district has a preventive
2 maintenance plan that has been approved by the council; and

3 (2) if applicable, the school district is
4 participating in the implementation of the facility information
5 management system.

6 [~~D.~~] E. As used in this section, "preventive
7 maintenance" means the regularly scheduled repair and
8 maintenance needed to keep a building component operating at
9 peak efficiency and to extend its useful life. "Preventive
10 maintenance" includes scheduled activities intended to prevent
11 breakdowns and premature failures, including periodic
12 inspections, lubrication, calibrations and replacement of
13 expendable components of equipment. "

14 Section 9. Section 22-24-7 NMSA 1978 (being Laws 2001,
15 Chapter 338, Section 12, as amended) is amended to read:

16 "22-24-7. [~~TEMPORARY PROVISION~~] PUBLIC SCHOOL CAPITAL
17 OUTLAY OVERSIGHT TASK FORCE-- CREATION-- STAFF. --

18 A. The "public school capital outlay oversight task
19 force" is created. The task force consists of [~~twenty~~] twenty-
20 four members as follows:

21 [~~(1) the dean of the university of New Mexico~~
22 ~~school of law or the dean's designee;~~

23 (2)] (1) the secretary of finance and
24 administration or the secretary's designee;

25 [~~(3)~~] (2) the secretary of public education or

1 the secretary's designee;

2 [~~(4)~~] (3) the state investment officer or the
3 state investment officer's designee;

4 (4) the speaker of the house of
5 representatives or the speaker's designee;

6 (5) the president pro tempore of the senate or
7 the president pro tempore's designee;

8 [~~(5)~~] (6) the chairmen of the house
9 appropriations and finance committee, the senate finance
10 committee, the senate education committee and the house
11 education committee or their designees;

12 [~~(6)~~—a] (7) two minority party [member]
13 members of the house of representatives, appointed by the New
14 Mexico legislative council;

15 [~~(7)~~—a] (8) two minority party [member]
16 members of the senate, appointed by the New Mexico legislative
17 council;

18 (9) a member of the interim legislative
19 committee charged with the oversight of Indian affairs,
20 appointed by the New Mexico legislative council, provided that
21 the member shall rotate annually between a senate member and a
22 member of the house of representatives;

23 [~~(8)~~] (10) two public members who have
24 expertise in education and finance appointed by the speaker of
25 the house of representatives;

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1 [~~(9)~~] (11) two public members who have
2 expertise in education and finance appointed by the president
3 pro tempore of the senate;

4 [~~(10)~~] (12) three public members [~~who have~~
5 ~~expertise in education and finance~~], two of whom are residents
6 of school districts that receive grants from the federal
7 government as assistance to areas affected by federal activity
8 authorized in accordance with Title 20 of the United States
9 Code, appointed by the governor; and

10 [~~(11)~~] (13) three superintendents of school
11 districts or their designees, two of whom are from school
12 districts that receive grants from the federal government as
13 assistance to areas affected by federal activity authorized in
14 accordance with Title 20 of the United States Code, appointed
15 by the New Mexico legislative council in consultation with the
16 governor.

17 B. The chair of the public school capital outlay
18 oversight task force shall be elected by the task force. The
19 task force shall meet at the call of the chair, but no more
20 than four times per calendar year.

21 C. [~~Members of the task force shall serve from the~~
22 ~~time of their appointment through June 30, 2005. On July 1,~~
23 ~~2005, the task force is terminated.] Non-ex-officio members of
24 the task force shall serve at the pleasure of their appointing
25 authorities.~~

1 D. The public members of the public school capital
2 outlay oversight task force shall receive per diem and mileage
3 pursuant to the Per Diem and Mileage Act.

4 E. The legislative council service, with assistance
5 from the public school facilities authority, the department of
6 finance and administration, the public education department,
7 the legislative education study committee and the legislative
8 finance committee, shall provide staff for the public school
9 capital outlay oversight task force. "

10 Section 10. Section 22-24-8 NMSA 1978 (being Laws 2001,
11 Chapter 338, Section 13, as amended) is amended to read:

12 "22-24-8. [~~TEMPORARY PROVISION~~] PUBLIC SCHOOL CAPITAL
13 OUTLAY OVERSIGHT TASK FORCE--DUTIES.--The public school capital
14 outlay oversight task force shall:

15 A. monitor the overall progress of bringing all
16 public schools up to the statewide adequacy standards developed
17 pursuant to the Public School Capital Outlay Act;

18 [~~A. study and evaluate~~] B. monitor the progress
19 and effectiveness of programs administered pursuant to the
20 Public School Capital Outlay Act and the Public School Capital
21 Improvements Act;

22 [~~B. review the condition index and the methodology~~
23 ~~used for ranking projects;~~]

24 C. [~~evaluate~~] monitor the existing permanent
25 revenue streams [~~as an~~] to ensure that they remain adequate

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1 long-term funding [~~source~~] sources for public school capital
2 outlay projects;

3 D. [~~monitor and assist~~] oversee the work of the
4 public school capital outlay council and the public school
5 facilities authority as they perform functions pursuant to the
6 Public School Capital Outlay Act, particularly as they
7 implement the statewide-based process for making grant awards;
8 [~~and~~]

9 E. appoint an advisory committee to study the
10 feasibility of implementing a long-range planning process that
11 will facilitate the interaction between charter schools and
12 their school districts on issues relating to facility needs;
13 and

14 [~~E.-~~] F. before the beginning of [~~the first~~] each
15 regular session of the [~~forty-seventh~~] legislature, report the
16 results of its analyses [~~findings~~] and oversight and any
17 recommendations to the governor and the legislature. "

18 Section 11. Section 22-24-9 NMSA 1978 (being Laws 2003,
19 Chapter 147, Section 1, as amended) is amended to read:

20 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
21 CREATION-- POWERS AND DUTIES. --

22 A. The "public school facilities authority" is
23 created under the council. The authority shall be headed by a
24 director, selected by the council, who shall be versed in
25 construction, architecture or project management. The director

1 may hire no more than two deputies with the approval of the
2 council, and, subject to budgetary constraints set out in
3 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
4 contract with such technical and administrative personnel as
5 are necessary to carry out the provisions of this section. The
6 director and deputies shall be exempt from the provisions of
7 the Personnel Act; after July 1, [~~2005~~] 2006, all other
8 employees of the authority shall be subject to the provisions
9 of the Personnel Act.

10 B. The authority shall:

- 11 (1) serve as staff to the council;
- 12 (2) as directed by the council, provide those
13 assistance and oversight functions required of the council by
14 Section 22-24-5.1 NMSA 1978;
- 15 (3) assist school districts with:
- 16 (a) the development and implementation
17 of five-year facilities plans and preventive maintenance plans;
- 18 (b) procurement of architectural and
19 engineering services;
- 20 (c) management and oversight of
21 construction activities; and
- 22 (d) training programs;
- 23 (4) conduct ongoing reviews of five-year
24 facilities plans, preventive maintenance plans and performance
25 pursuant to those plans;

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1 (5) as directed by the council, assist school
2 districts in analyzing and assessing their space utilization
3 options;

4 (6) ensure that public school capital outlay
5 projects are in compliance with applicable building codes;

6 (7) conduct on-site inspections as necessary
7 to ensure that the construction specifications are being met
8 and periodically inspect all of the documents related to
9 projects;

10 (8) require the use of standardized
11 construction documents and the use of a standardized process
12 for change orders;

13 (9) have access to the premises of a project
14 and any documentation relating to the project;

15 (10) after consulting with the department,
16 recommend building standards for public school facilities to
17 the council and ensure compliance with building standards
18 adopted by the council;

19 (11) notwithstanding the provisions of
20 Subsection D of Section 22-24-6 NMSA 1978, account for all
21 distributions of grant assistance from the fund for which the
22 initial award was made after July 1, 2004, and make annual
23 reports to the department, the governor, the legislative study
24 committee, the legislative finance committee and the
25 legislature;

1 [~~(11)~~] (12) maintain a database of the
2 condition of school facilities and maintenance schedules; and

3 [~~(12)~~] (13) ensure that outstanding
4 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
5 1978. In the performance of this duty, the authority:

6 (a) shall work with school districts to
7 validate the assessment of the outstanding deficiencies and the
8 projected costs to correct the deficiencies;

9 (b) shall work with school districts to
10 provide direct oversight of the management and construction of
11 the projects that will correct the outstanding deficiencies;

12 (c) shall oversee all aspects of the
13 contracts entered into by the council to correct the
14 outstanding deficiencies;

15 (d) may conduct on-site inspections
16 while the deficiencies correction work is being done to ensure
17 that the construction specifications are being met and may
18 periodically inspect all of the documents relating to the
19 projects;

20 (e) may require the use of standardized
21 construction documents and the use of a standardized process
22 for change orders;

23 (f) may access the premises of a project
24 and any documentation relating to the project; and

25 (g) shall maintain, track and account

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1 for deficiency correction projects separately from other
2 capital outlay projects funded pursuant to the Public School
3 Capital Outlay Act.

4 C. All actions taken by the authority shall be
5 consistent with educational programs conducted pursuant to the
6 Public School Code. In the event of any potential or perceived
7 conflict between a proposed action of the authority and an
8 educational program, the authority shall consult with the
9 secretary [~~of public education~~].

10 D. A school district, aggrieved by a decision or
11 recommendation of the authority, may appeal the matter to the
12 council by filing a notice of appeal with the council within
13 thirty days of the authority's decision or recommendation.

14 Upon filing of the notice:

15 (1) the decision or recommendation of the
16 authority shall be suspended until the matter is decided by the
17 council;

18 (2) the council shall hear the matter at its
19 next regularly scheduled hearing or at a special hearing called
20 by the chair for that purpose;

21 (3) at the hearing, the school district, the
22 authority and other interested parties may make informal
23 presentations to the council; and

24 (4) the council shall finally decide the
25 matter within ten days after the hearing. "

1 Section 12. A new section of the Public School Capital
2 Outlay Act is enacted to read:

3 "[NEW MATERIAL] PUBLIC FACILITIES TO BE USED BY CHARTER
4 SCHOOLS- -ASSESSMENT. - -

5 A. Prior to the occupancy of a public facility by a
6 charter school, the charter school shall notify the council of
7 the intended use, together with such other information as
8 required by rule of the council.

9 B. Within sixty days of the notification to the
10 council, the public school facilities authority shall assess
11 the public facility in order to determine the extent of
12 compliance with the statewide adequacy standards and the amount
13 of outstanding deviation from those standards. The results of
14 the assessment shall be submitted to the charter school, the
15 school district in which the charter school is located and the
16 council.

17 C. Once assessed pursuant to Subsection B of this
18 section, the public facility shall be prioritized and eligible
19 for grants pursuant to the Public School Capital Outlay Act in
20 the same manner as all other public schools in the state.

21 D. As used in this section, "public facility" means
22 a building owned by the charter school, the school district,
23 the state, an institution of the state, another political
24 subdivision of the state, the federal government or a tribal
25 government. "

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underscored material = new
[bracketed material] = delete

1 Section 13. Section 22-18-1 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 228, as amended) is amended to read:

3 "22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE. --
4 After consideration of the priorities for the school district's
5 capital needs as shown by the facility assessment database
6 maintained by the public school facilities authority and
7 subject to the provisions of Article 9, Section 11 of the
8 constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA
9 1978, a school district may issue general obligation bonds for
10 the purpose of erecting, remodeling, making additions to and
11 furnishing school buildings, purchasing or improving school
12 grounds, purchasing computer software and hardware for student
13 use in public schools, providing matching funds for capital
14 outlay projects funded pursuant to the Public School Capital
15 Outlay Act or any combination of these purposes. The bonds
16 shall be fully negotiable and constitute negotiable instruments
17 within the meaning and for all purposes of the Uniform
18 Commercial Code. "

19 Section 14. Section 22-25-9 NMSA 1978 (being Laws 1975
20 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

21 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
22 TAX UNDER CERTAIN CIRCUMSTANCES. --

23 A. Except as provided in Subsection C or G of this
24 section, the secretary [~~of public education~~] shall distribute
25 to any school district that has imposed a tax under the Public

1 School Capital Improvements Act an amount from the public
2 school capital improvements fund that is equal to the amount by
3 which the revenue estimated to be received from the imposed
4 tax, at the rate certified by the department of finance and
5 administration in accordance with Section 22-25-7 NMSA 1978,
6 assuming a one hundred percent collection rate, is less than an
7 amount calculated by multiplying the school district's first
8 forty days' total program units by the amount specified in
9 Subsection B of this section and further multiplying the
10 product obtained by the tax rate approved by the qualified
11 electors in the most recent election on the question of
12 imposing a tax under the Public School Capital Improvements
13 Act. The distribution shall be made each year that the tax is
14 imposed in accordance with Section 22-25-7 NMSA 1978; provided
15 that no state distribution from the public school capital
16 improvements fund may be used for capital improvements to any
17 administration building of a school district. In the event
18 that sufficient funds are not available in the public school
19 capital improvements fund to make the state distribution
20 provided for in this section, the dollar per program unit
21 figure shall be reduced as necessary.

22 B. In calculating the state distribution pursuant
23 to Subsection A of this section, the following amounts shall be
24 used:

25 (1) the amount calculated pursuant to

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1 Subsection D of this subsection per program unit; and
2 (2) for fiscal year 2006 and thereafter, an
3 additional amount certified to the secretary [~~of public~~
4 ~~education~~] by the public school capital outlay council. No
5 later than June 1, 2005 and each June 1 thereafter, the council
6 shall determine the amount needed in the next fiscal year for
7 public school capital outlay projects pursuant to the Public
8 School Capital Outlay Act and the amount of revenue, from all
9 sources, available for the projects. If, in the sole
10 discretion of the council, the amount available exceeds the
11 amount needed, the council may certify an additional amount
12 pursuant to this paragraph; provided that the sum of the amount
13 calculated pursuant to this paragraph plus the amount in
14 Paragraph (1) of this subsection shall not result in a total
15 statewide distribution that, in the opinion of the council,
16 exceeds one-half of the total revenue estimated to be received
17 from taxes imposed pursuant to the Public School Capital
18 Improvements Act.

19 C. For fiscal year 2004 and thereafter,
20 notwithstanding the amount calculated to be distributed
21 pursuant to Subsections A and B of this section, except as
22 provided in Subsection G of this section, a school district,
23 the voters of which have approved a tax pursuant to Section
24 22-25-3 NMSA 1978, shall not receive a distribution less than
25 the amount calculated pursuant to Subsection E of this section,

1 multiplied by the school district's first forty days' total
2 program units and further multiplying the product obtained by
3 the approved tax rate.

4 D. For purposes of calculating the distribution
5 pursuant to Subsection B of this section, the amount used in
6 Paragraph (1) of that subsection shall equal fifty dollars
7 (\$50.00) through fiscal year 2005, sixty dollars (\$60.00) in
8 fiscal year 2006 and in each subsequent fiscal year shall equal
9 the amount for the previous fiscal year adjusted by the
10 percentage increase between the next preceding calendar year
11 and the preceding calendar year of the consumer price index for
12 the United States, all items, as published by the United States
13 department of labor.

14 E. For purposes of calculating the minimum
15 distribution pursuant to Subsection C of this section, the
16 amount used in that subsection shall equal five dollars (\$5.00)
17 through fiscal year 2005 and in each subsequent fiscal year
18 shall equal the amount for the previous fiscal year adjusted by
19 the percentage increase between the next preceding calendar
20 year and the preceding calendar year of the consumer price
21 index for the United States, all items, as published by the
22 United States department of labor.

23 F. In expending distributions made pursuant to this
24 section, school districts shall give priority to maintenance
25 projects. In addition, distributions made pursuant to this

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1 section may be expended by school districts for the school
2 district portion of the total project cost for roof repair or
3 replacement required by Section 22-24-4.3 NMSA 1978.

4 G. If a serious deficiency in a roof of a public
5 school facility has been corrected pursuant to Section
6 22-24-4.4 NMSA 1978 and the school district has refused to pay
7 its share of the cost as determined by that section, until the
8 public school capital outlay fund is reimbursed in full for the
9 share attributed to the district, the distribution calculated
10 pursuant to this section shall not be made to the school
11 district but shall be made to the public school capital outlay
12 fund.

13 [~~G.~~] H. In making distributions pursuant to this
14 section, the secretary [~~of public education~~] shall include such
15 reporting requirements and conditions as are required by rule
16 of the public school capital outlay council. The council shall
17 adopt such requirements and conditions as are necessary to
18 ensure that the distributions are expended in the most prudent
19 manner possible and are consistent with the original purpose as
20 specified in the authorizing resolution. Copies of reports or
21 other information received by the secretary in response to the
22 requirements and conditions shall be forwarded to the council."

23 Section 15. A new section of the Public School Code is
24 enacted to read:

25 "[NEW MATERIAL] PREVENTIVE MAINTENANCE PLANS--"

1 PARTICIPATION IN FACILITY INFORMATION MANAGEMENT SYSTEM -- Each
2 school district shall:

3 A. develop and implement a preventive maintenance
4 plan following guidelines adopted by the public school capital
5 outlay council pursuant to Section 22-24-5.3 NMSA 1978; and

6 B. participate in the facility information
7 management system pursuant to the schedule adopted by the
8 public school capital outlay council. "

9 Section 16. Section 22-29-1 NMSA 1978 (being Laws 1986,
10 Chapter 94, Section 1) is amended to read:

11 "22-29-1. SHORT TITLE. -- [~~This act~~] Chapter 22, Article 29
12 NMSA 1978 may be cited as the "Public School Insurance
13 Authority Act". "

14 Section 17. A new section of the Public School Insurance
15 Authority Act is enacted to read:

16 "[NEW MATERIAL] EXPENDITURE OF INSURANCE PROCEEDS FOR
17 PUBLIC SCHOOLS. -- Payment for a claim under property insurance
18 coverage for property damage to public school facilities may be
19 paid directly to the school district, or, pursuant to the
20 Procurement Code, the insurance proceeds may be expended by the
21 insurer to repair the damage. If the payment is made directly
22 to the school district, without further approval of the
23 authority or any insurance carrier, the proceeds of the
24 insurance payment may be expended by the school district to
25 repair or replace the damaged facility if:

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1 A. the school district complies with the
2 Procurement Code; and

3 B. contracts for the repair or replacement are
4 approved by the public school facilities authority pursuant to
5 Section 22-20-1 NMSA 1978, provided that:

6 (1) the cost of settlement of the insurance
7 claim shall not be increased by inclusion of the insurance
8 proceeds in the construction contracts; and

9 (2) insurance claims settlements shall
10 continue to be governed by insurance policies, memoranda of
11 coverage and rules related to them."

12 Section 18. APPROPRIATIONS. --

13 A. One million five hundred sixty-two thousand
14 dollars (\$1,562,000) is appropriated from the public school
15 capital outlay fund to the public school facilities authority
16 for expenditure in fiscal years 2005 through 2007 for the
17 purpose of developing and implementing a uniform, statewide
18 web-based facility information management system pursuant to
19 the provisions of Section 22-24-5.3 NMSA 1978. Any unexpended
20 or unencumbered balance remaining at the end of fiscal year
21 2007 shall revert to the public school capital outlay fund.

22 B. Two hundred eighty-four thousand four hundred
23 dollars (\$284,400) is appropriated from the public school
24 capital outlay fund to the public school capital outlay council
25 to make grants in fiscal year 2005 for the purpose of

1 reimbursing charter schools that are in their first year of
2 operation in the 2004-2005 school year for lease payments. Any
3 unexpended or unencumbered balance remaining at the end of
4 fiscal year 2005 shall revert to the public school capital
5 outlay fund. The amount of a grant to a charter school shall
6 be determined pursuant to Paragraph (1) of Subsection J of
7 Section 22-24-4 NMSA 1978, provided that:

8 (1) the amount per MEM used in Subparagraph
9 (b) of Paragraph (1) of Subsection J of Section 22-24-4 NMSA
10 1978 shall be three hundred dollars (\$300); and

11 (2) the MEM shall be calculated on the
12 enrollment in the charter school on the fortieth, eightieth and
13 one hundred twentieth days of the 2004-2005 school year.

14 Section 19. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.

underscored material = new
[bracketed material] = delete